

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAY 23 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0115-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ZACKARIAH ALEXUS SURGICK,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2004022835001DT

Honorable Christopher Whitten, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney
By Andrea L. Keever

Phoenix
Attorneys for Respondent

Zackariah A. Surgick

Buckeye
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Petitioner Zackariah Surgick seeks review¹ of the trial court's order summarily dismissing his successive petition for post-conviction relief filed pursuant to

¹Surgick filed in this court a "Motion for Reconsideration/Petition for Review" and a "Memorandum Decision Petition for Review." The first filing appears to be a

Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 In 2005, Surgick was convicted after a jury trial of armed robbery and aggravated assault and was sentenced to consecutive, aggravated prison terms totaling thirty-six years. His convictions were affirmed on appeal. *State v. Surgick*, No. 1 CA-CR 05-0849 (memorandum decision filed Mar. 22, 2007). Surgick filed a petition for post-conviction relief raising various claims and requesting that counsel be appointed. The trial court struck that petition and appointed counsel, and counsel filed a notice stating he had reviewed the record but was “unable to raise any viable issues under Rule 32.”

¶3 Surgick then filed a supplemental, pro se petition for post-conviction relief, claiming that his trial and Rule 32 counsel had been ineffective, that his confession had been obtained in violation of *Miranda*,² that there was no DNA³ evidence linking him to the crimes, that several of his constitutional and “federal civil” rights had been violated when his attorney and the state had prevented him and his mother from testifying at trial, and that his “sentence constitutes cruel and unusual punishment” because he was receiving inadequate medical care in prison. The trial court summarily denied relief. Surgick did not seek review of that order under Rule 32.9(c). In 2011, Surgick filed another petition for post-conviction relief raising essentially the same claims and asserting various violations of his constitutional rights. The trial court summarily

recitation of the procedural history of his case, while the second raises his substantive claims. We have considered both filings in addressing this matter.

²*Miranda v. Arizona*, 384 U.S. 436 (1966).

³Deoxyribonucleic acid.

dismissed that petition, concluding Surgick had raised no claims that properly could be raised in a successive petition for post-conviction relief.

¶4 On review, Surgick reiterates his claims that his mother was improperly prevented from testifying, that his confession was involuntary, that his trial counsel had been ineffective, that his sentence constitutes cruel and unusual punishment, and that his due process rights were violated. But Surgick identifies no error, and we find none, in the trial court's conclusion that these claims may not be raised in a successive petition for post-conviction relief. Surgick's claims are precluded because he either has raised or had the opportunity to raise them on appeal or in his previous Rule 32 proceeding, Ariz. R. Crim. P. 32.2(a)(2), (3), and none of the claims listed in his petition for review fall within the exceptions to preclusion in Rule 32.2(b). *See also* Ariz. R. Crim. P. 32.1(d), (e), (f), (g), (h).

¶5 Although review is granted, relief is denied.

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge